BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JAMES E. TAPP, JR. Claimant)
VS.	ý) Docket No. 198,699
FERRELL CONSTRUCTION COMPANY Respondent)
AND)
BUILDERS ASSOCIATION SELF INSURERS FUND Insurance Carrier)))

ORDER

Respondent appeals from a Preliminary Hearing Order of July 24, 1995, wherein Administrative Law Judge Floyd V. Palmer granted claimant benefits of temporary total disability and medical treatment finding claimant had carried his burden of proof that his exposure to welding fumes had contributed to his current symptomatology and probably aggravated same.

ISSUES

Whether claimant's ongoing symptomatology resulted from an accidental injury which arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant began working for respondent in September, 1994. On or about October 31, 1994, while welding on galvanized metal, claimant began experiencing difficulties in breathing. He testified that welding galvanized metal creates zinc oxide gas. While claimant has welded galvanized metal in the past, he was always before provided a respirator. This time, with Ferrell Construction, he was not provided a respirator and became symptomatic shortly after breathing the fumes. Claimant was off work and was provided medical care as a result of this exposure. Respondent does not deny claimant met with accidental injury arising out of and in the course of his employment in October, 1994.

In January, 1995, claimant again began experiencing symptoms including chest pain and difficulty in breathing. Respondent alleges this new aggravation is not related to his work-related symptomatology as claimant had been rated as having reached maximum medical improvement by Dr. Frye on January 3, 1995.

Numerous medical records have been placed into evidence including those of Dr. Frye, Dr. Waller, Dr. Hill and Dr. McGee. The medical records all agree that, while

claimant has a long history of pulmonary problems going back to the 1970s and has been a smoker for 35 years, nevertheless, the exposure to the welding fumes did aggravate his ongoing pulmonary condition.

It is the claimant's burden to prove by a preponderance of the credible evidence his entitlement to benefits. See K.S.A. 44-501 and K.S.A. 44-508(g).

The Appeals Board finds that claimant has carried his burden of showing his exposure to the welding fumes while employed with respondent aggravated his preexisting pulmonary condition. Claimant has established by a preponderance of the credible evidence that his ongoing symptomatology results from an accidental injury arising out of and in the course of his employment with respondent and the Award of Administrative Law Judge Floyd V. Palmer entered on July 27, 1995, appropriately grants claimant benefits for his ongoing symptomatology.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated July 24, 1995, should be and is hereby affirmed.

Dated this	_ day of October, 1995.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Paul D. Post, Topeka, Kansas Wade A. Dorothy, Lenexa, Kansas Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED.